



# Manistee County Board of Commissioners

Manistee County Courthouse • 415 Third Street • Manistee, Michigan 49660

CHAIRPERSON  
Jim Krolczyk  
VICE-CHAIRPERSON  
Ken Hilliard

Duane Anderson  
Ervin Kowalski  
Glenn Lottie  
Carl Rutske  
Richard Schmidt

CLERK  
Marilyn Kliber  
(231) 723-3331  
CONTROLLER/ADMINISTRATOR  
Thomas Kaminski  
(231) 398-3500

**DRAFT**

## WAYS & MEANS COMMITTEE REPORT

Tuesday, January 10, 2012  
9:00 A.M.

Courthouse and Government Center  
Board of Commissioner's Room

Members Present: Ervin Kowalski, Chairperson; Jim Krolczyk and Duane Anderson

Others Present: Thomas Kaminski, County Controller/Administrator; Russell Pomeroy, County Treasurer; Jill Nowak, County Clerk; Marilyn Kliber, former County Clerk; Penny Pepera, Register of Deeds; Kris Randall, 19<sup>th</sup> Circuit Court Administrator; Dale Kowalkowski, Sheriff; Robert Carson, County Planner; Roger Elbers, Equalization Director; Ken Grabowski, Manistee News Advocate; and Jeri Lyn Prielipp, Finance Assistant/Recording Secretary

The meeting was called to order at 9:00 A.M.

### ITEMS REQUIRING BOARD ACTION

Jeri Lyn Prielipp, Finance Assistant, presented the Committee with Claiming Summaries for December 13, 2011, through January 10, 2012, and a summary of the On-Demand checks for their review and approval. Totals are as follows:

101 General Fund	\$129,787.81
201 County Road Fund	0.00
215 Friend of the Court Fund	0.00
216 Department Contingency Fund	0.00
218 Elections Fund	11,537.71
225 Recycling Fund	6,760.60
230 County Employee Training Fund	1,611.52
234 Judicial Technology Fund	0.00
235 District Court Services Fund	930.34
236 Maintenance of Effort Fund	20,889.09
241 JAWS of Life Fund	0.00
242 Bear Lake Improvement Fund	0.00
243 Brownfield Redevelopment Authority Fund	0.00
245 Public Improvement Fund	0.00
246 Township Improvement Revolving Fund	0.00
251 Capital Improvement Fund	0.00
252 Tax Refund Fund	0.00
253 Remonumentation Fund	20,950.00

254 Medical Care Depreciation Fund	0.00
255 Brownfield Site Assessment Fund	0.00
256 Register of Deeds Automation Fund	0.00
257 Budget Stabilization Fund	0.00
258 Mounted Search and Rescue	0.00
259 Legal Defense Fund	0.00
260 Health Insurance Fund	253,490.34
261 9-1-1 Service Fund	0.00
262 Dive Equipment Fund	0.00
263 Sheriff's Office Forfeited Assets Fund	0.00
264 Family Counseling Services Fund	0.00
265 Juvenile Drug Court Fund	0.00
266 Law Enforcement Training Fund	4,109.80
267 Friends of Animal Control Fund	0.00
268 Homeland Security Grant Fund	0.00
269 Law Library Fund	1,643.00
271 County Library Fund	0.00
272 County Library Trust Fund	0.00
273 Computer Technology Fund	10,549.91
274 Drug Testing - District Court Fund	214.42
275 Dial-A-Ride Fund	0.00
276 Forestry Fund	0.00
277 Air Photo Fund	0.00
278 LEPC Grant Fund	0.00
279 Economic Development - Housing Fund	1,272.00
280 MSHDA Grant Fund	0.00
281 Law Enforcement Technology Fund	0.00
282 EDO CDBG Grant Fund	0.00
283 F.I.A. Benzie County	0.00
284 Community Corrections Fund	806.01
285 Drunk Driving Case Flow Fund	0.00
286 Juvenile Intervention Fund	925.53
287 JABGN Grant Fund	0.00
288 Sheriff Dog Census Fund	0.00
290 Department of Human Services Fund	0.00
292 Child Care Fund	7,966.37
293 Soldiers & Sailors Relief Fund	0.00
294 Veterans Trust Fund	354.65
295 Airport Authority Fund	1.56
296 Juvenile Justice Fund	0.00
297 Compensated Services Fund	73,226.73
298 County Employee Separation Fund	0.00
299 Unemployment Fund	0.00
356 Fair Board Debt Fund	0.00
360 9-1-1 Expansion Construction Fund	0.00
361 Jail Expansion Construction Fund	0.00
362 Jail Building Bond	0.00
368 Library Loan Fund	0.00
369 Building Authority Debt Fund	0.00

370 County Road Building Debt Fund	0.00
461 Building Authority Construction Fund	0.00
462 County Road Construction Fund	0.00
512 Medical Care Facility Fund	0.00
603 Vehicle Fund	13,069.99
606 Tax Revolving Fund	0.00
609 Tax Revolving Fund	0.00
620 Tax Revolving - State Sales	0.00
701 Trust & Agency Fund	5,810.61

Total	\$565,907.99
	=====

On Demand Checks Total	\$313,364.18
	=====

**Mr. Krolczyk recommended that the bills be accepted in the amount of \$565,907.99 and that the same be placed on file. No alternative recommendation was proposed.**

The Committee considered approving the payment of unused accumulated vacation hours, sick hours and personal days to Jill Nowak, who was appointed as County Clerk on January 3, 2012. Ms. Nowak pointed out that APPENDIX A reflects a termination date of January 2, 2012, however she was appointed County Clerk on January 3, 2012 effective January 1, 2012. Mr. Kaminski explained to the Committee that an Elected Official does not accumulate vacation time, personal time or sick days, therefore when a County employee becomes an Elected Official, they are entitled to this payout for unused hours/days.

**Mr. Anderson recommended approving the payment of unused accumulated vacation hours, sick hours, and personal days to Jill Nowak in the amount of \$5,753.52. No alternative recommendation was proposed. (APPENDIX A)**

Ms. Nowak appeared before the Committee to discuss her starting salary as County Clerk and she presented the Committee with supporting documentation (APPENDIX B), wherein Ms. Nowak informed Mr. Kaminski and Mr. Pomeroy in writing that the paycheck she received on January 6, 2012 was incorrect. She argues that effective January 1, 2012, she should have received the same wage compensation as the former County Clerk. Ms. Nowak also explained that she doesn't believe this is an issue for the Personnel Committee, because Ways & Means is the financial Committee that oversees payroll, the county budgets, etc., and since the County Clerk's salary was approved as part of the budget resolution passed September 22, 2011 (APPENDIX B-3 & 4) she believes that this is a budget issue and therefore should be addressed by this Committee.

Ms. Nowak directed Committee members' attention to MCL 45.421 (APPENDIX B-2), which states, in part:

"The annual salary of each salaried county officer, which is by law fixed by the county board of commissioners, shall be fixed by the board before November 1 each year and shall not be diminished during the term for which the county officer has been elected or appointed... ."

Ms. Nowak stated that she is a county officer, and as the law clearly states, she is completing the unexpired

term of the previous County Clerk, and therefore the salary can not be diminished during that term. Ms. Nowak also indicated that she and Mr. Kaminski have recently discussed the Attorney General's Opinion of July 8, 2003 (APPENDIX B5-B7) which addresses a table-based compensation system. Mr. Krolczyk stated that he agrees with Ms. Nowak, as the Attorney General's Opinion clearly states:

"Insofar as Allegan County's table based compensation system and policies are concerned, MCL 45.421 is controlling. The language of MCL 45.421 is clear that although a county board of commissioners has the power to fix the salary of a county officer, it is expressly prohibited from diminishing that salary during a term of office."

Mr. Kaminski indicated that this issue has nothing to do with the budget or the budgeted wage. He explained that when Ms. Nowak was sworn in, the Administrator's Office didn't know what wage to pay her, so in order to meet the January 6, 2012 payroll, Ms. Nowak was paid for her last week pay of December 2011 at her old rate, plus 1/26th of the County Clerk rate at the lowest rate within the County Clerk pay scale, which then left Ms. Nowak the option of taking it before the Personnel Committee. Mr. Kaminski stated that he had no intention of trying to short-change anyone, he simply didn't feel the Administrator's Office had the authority to just automatically pay Ms. Nowak at the former County Clerk's wage. The Administrator was simply trying to follow what he believed to be County policy and the law.

Mr. Kaminski went on to explain the different scenarios that were discussed in an attempt to come up with the accurate salary. Mr. Kaminski stated that he sought direction from the Prosecuting Attorney and the County's Labor Attorney, Bonnie Toskey. Ms. Toskey indicated that the County had to pay Ms. Nowak at the former County Clerk's rate, unless there is a wage classification system in place (which there is in this case). Ms. Toskey was provided with the salary progression schedule and opined that the County use that schedule in this case. Mr. Kaminski reported that he also researched the history of prior action taken by the Board of Commissioners with regard to setting salaries for Elected Officials and establishing a salary progression schedule.

Mr. Kowalski stated that he feels this is strictly a Personnel Committee issue because they set the wages, fringes, etc. Mr. Kowalski also stated that he feels Ms. Nowak should be paid at the same wage as the former County Clerk, and he therefore suggested that this Committee recommend to the Personnel Committee that Ms. Nowak be paid the same as the former County Clerk. Mr. Anderson asked Ms. Nowak what her understanding is of what the pay scale will be after the November 2012 election? Ms. Nowak replied that it is her understanding that with the election comes a new term and the Board of Commissioners can set the elected County Clerk's compensation at whatever they choose, however the law states the compensation must be set by the November 1<sup>st</sup> deadline.

After lengthy discussion,

**Mr. Kowalski recommended that the Personnel Committee set the wage for Jill Nowak, newly appointed County Clerk, at the same rate of pay as that of the former County Clerk who retired effective December 30, 2011, said wage to remain in effect through the current term of office. No alternative recommendation was proposed.**

#### **ITEMS NOT REQUIRING BOARD ACTION:**

Mr. Kaminski stated that recently he was asked by a County Commissioner to look into the "potential" for

combining the County Clerk/Register of Deeds position in Manistee County, effective with the next term of office. He asked for the Committee's thoughts on whether or not they would like him to look into the matter, and he briefly touched on a couple of the pros and cons of combining the position. He also indicated that the County Board will need to make a decision prior to May 15, 2012, which is the deadline for when candidates must register to run in the November election. He said the sole purpose of bringing this up now is because of the recent vacancy in office and the upcoming election. Mr. Krolczyk stated that if he was asked to vote on this issue today, he would probably be opposed. Following discussion, Mr. Kowalski instructed the County Controller/Administrator to contact other nearby counties and/or counties in a similar situation to get their feedback on combining the County Clerk/Register of Deeds position and report back to the Committee with the results. Ms. Randall commented that there are changes being made every day in the State Court Administrator's Office and no one knows what changes may take place in the Courts and in the County Clerk's Office.

Mr. Kaminski announced that at this month's County Board meeting, a close-out Public Hearing will be held on Manistee County's Michigan Community Development Block Grant project MSC-208004-EDIG, Mariah Power and MasTech Manufacturing Machinery and Equipment project grant in the amount of \$400,000.

Mr. Kaminski announced that the City Council will hold a work session at 7:00 p.m. this evening (January 10, 2012) regarding Airport Authority by-laws, specifically in regards to eliminating the requirement that a City of Manistee representative be appointed to sit on the Airport Authority Board.

The Committee set its regular monthly meeting schedule for 9:00 A.M. on the following Tuesdays in 2012:

February 14, 2012	August 14, 2012
March 13, 2012	September 11, 2012
April 17, 2012 (3 <sup>rd</sup> Tuesday)	October 16, 2012 (3 <sup>rd</sup> Tuesday)
May 8, 2012	November 13, 2012
June 12, 2012	December 11, 2012
July 10, 2012	

There being no further business to come before the Committee, the meeting adjourned at 10:00 A.M.

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Ervin Kowalski, Chairperson

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Duane Anderson, Commissioner

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Jim Krolczyk, Commissioner



Manistee County Courthouse • 415 Third Street • Manistee, Michigan 49660

(APPENDIX A)  
OFFICE OF  
CONTROLLER/  
ADMINISTRATOR  
231-398-3500 • Fax 231-723-1795  
www.manisteecountymi.gov

## MEMORANDUM

TO: Manistee County Board of Commissioners

FROM: Karen M. Molby, Personnel Officer/Administrative Assistant *KMM*

DATE: January 5, 2012

RE: Unused Accumulated Vacation, Sick Time and Personal Day Payment

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Employee Name:	Jill Nowak
Department:	County Clerk's Office
Employee #:	1304
Hourly Rate:	\$19.52
Termination Date:	January 2, 2012 (Appointed County Clerk)
2012 Unused Vacation Hours:	157.0
2013 Earned Vacation Hours:	0.0
2012 Unused Accumulated Sick Hours:	92.75
2012 Unused Personal Day Hours:	45.0
2012 Unused Vacation Payment:	\$3,064.64
2013 Earned Vacation Payment:	\$0.00
2012 Unused Sick Time Payment:	\$1,810.48
2012 Unused Personal Day Payment:	\$878.40
2012 Unused Cleaning Allowance Due County:	\$0.00
2012 Shift Differential Due Employee:	\$0.00
Total Amount Due:	<u>\$5,753.52</u>

Payment to be made from the "Employee Separations" Account #298 000 701.001.

Approved for payment by the Manistee County Board of Commissioners on Tuesday,  
January 17, 2012.

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Jim Krolczyk, County Board Chairperson



## (APPENDIX B-1)

CLERK

Jill M. Nowak

231-723-3331

Fax 231-723-1492

[jnowak@manisteecountymi.gov](mailto:jnowak@manisteecountymi.gov)

Manistee County Courthouse • 415 Third Street • Manistee, Michigan 49660

January 7, 2012

Thomas Kaminski, County Administrator  
Manistee County  
415 Third St.  
Manistee, MI 49660

Russell Pomeroy, County Treasurer  
Manistee County  
415 Third St.  
Manistee, MI 49660

RE: Salary for County Officers

Dear Mr. Kaminski and Mr. Pomeroy:

I was appointed by Circuit Court Judge James M. Batzer on January 1, 2012, and sworn into office on January 3, 2012 as the Manistee County Clerk. I was appointed to fulfill the unexpired term of retiring County Clerk Marilyn Kliber.

I am informing you the paycheck I received on January 6, 2012 is incorrect. I was paid for one week at my previous Chief Deputy rate for the last week of 2011 (this amount is correct); and also for two weeks or 1/26<sup>th</sup> (26 pay periods) of the Minimum Step 1 of the County Clerk Salary scale, this is an incorrect step. It should reflect 1/26<sup>th</sup> of Step 8.

Please see the enclosed statute MCL 45.421(1). I am a County Officer, the salary for the County Clerk was fixed by Resolution dated September 22, 2011 of the County Board of Commissioners (see attached). The statute states the salary "shall not be diminished during the term for which the County Officer has been elected or appointed".

Also enclosed, are a letter and an Attorney General's Opinion of another County Officer's salary, OAG 2003-2004 No. 7128. This supports the above information. Also, specifically on page two, paragraph three of the opinion, "Thus, a "term" is not personal to the officer but rather refers to the office".

Michigan Attorney General Opinions are binding for government officials; one could be personally liable for acting contrary to an Attorney General's Opinion.

I request a new check with the correct salary be issued directly. At that time I will return the incorrect check to you as I have it in my possession.

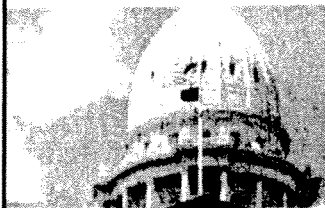
If you have any questions, please feel free to visit me in the County Clerk's Office or at phone number 723-3331. My e-mail is [jnowak@manisteecountymi.gov](mailto:jnowak@manisteecountymi.gov).

Sincerely,

Jill M. Nowak  
Manistee County Clerk

cc: Ford Stone, Manistee County Prosecuting Attorney  
Jim Krolczyk, Chairman, Manistee County Board of Commissioners  
All members of the Manistee County Board of Commissioners

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**(APPENDIX B-2)****MICHIGAN LEGISLATURE**

96th Legislature Regular Session  
 Michigan Compiled Laws Complete Through PA  
 Compiled through Act 209 of 2011  
 House: Adjourned until Tuesday, November 29, 2011  
 1:30:00 PM  
 Senate: Adjourned until Tuesday, November 29,  
 2011 10:00:00 AM

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Register?](#)[Login](#)[New!](#)[Help](#)**Navigation**[← Documents →](#)[MCL Chapter Index](#)[Chapter 45](#)[Act 154 of 1879](#)[Section 45.421](#)**Legislature**[Bills](#)[Calendars](#)[Committees](#)[Committee Bill Records](#)[Committee Meetings](#)[Concurrent Resolutions](#)[Initiatives](#)[Joint Resolutions](#)[Journals](#)[Legislators](#)[Public Acts \(Signed Bills\)](#)[Resolutions](#)[Session Schedules](#)[Basic Legislative Search](#)[Adv Legislative Search](#)**Laws**[Often Req Laws](#)[Req Repealed Acts](#)[Basic MCL Search](#)[Advanced MCL Search](#)[Public Act MCL Search](#)[Michigan Constitution](#)[Chapter Index](#)[Executive Orders](#)[Executive](#)[Reorganization](#)[Historical Documents](#)[MCL Tables](#)**More**[Color Picker](#)[Publications](#)[Related Sites](#)[Syndication](#)**Section 45.421**[friendly link](#) [combine MCL sections](#)
**SALARIES OF COUNTY OFFICERS (EXCERPT)**  
**Act 154 of 1879**
**45.421 Salaries of county officers; determination; change  
 in compensation.**
**Sec. 1.**

(1) The annual salary of each salaried county officer, which is by law fixed by the county board of commissioners, shall be fixed by the board before November 1 each year and shall not be diminished during the term for which the county officer has been elected or appointed, but may be increased by the board during the officer's term of office.

(2) Notwithstanding subsection (1), for a county which has a county officers compensation commission, the compensation of each nonjudicial elected officer of the county shall be determined by that commission. A change in compensation for those officers of a county which has a county officers compensation commission shall commence at the beginning of the first odd numbered year after the determination is made by the county officers compensation commission and is not rejected.

**History:** 1879, Act 154, Eff. Aug. 30, 1879 ;-- How. 508 ;-- CL 1897, 2649 ;-- CL 1915, 2514 ;-- CL 1929, 1426 ;-- CL 1948, 45.421 ;-- Am. 1967, Act 163, Eff. Nov. 2, 1967 ;-- Am. 1978, Act 487, Imd. Eff. Dec. 1, 1978

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## (APPENDIX B-3)

THURSDAY, SEPTEMBER 22, 2011

YEAS: 7 Schmidt, Anderson, Hilliard, Kowalski, Krolczyk, Lottie, Rutske  
NAYS: 0

Motion Carried

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Sharon Lemmer commented on the budget FY 2011/12.

Moved by Hilliard, supported by Schmidt to close the Public Hearing.

YEAS: 7 Anderson, Hilliard, Kowalski, Krolczyk, Lottie, Rutske, Schmidt  
NAYS: 0

Motion Carried

+++++

### **COUNTY OF MANISTEE GENERAL APPROPRIATIONS ACT - 2011**

A Resolution appropriating monies and adopting the FY 2011/12 Manistee County General Fund budget, and FY 2011/12 Supplemental Fund budgets.

It being the finding and opinion of the Manistee County Board of Commissioners:

The Ways & Means Committee and the County Board of Commissioners have had under consideration the taxes of local units of government and the budgetary needs of various County departments/budgetary units.

The Ways & Means Committee and the County Board of Commissioners, after considerable deliberations, has recommended adoption of the FY 2011/12 Budget.

In recognition of the above-listed findings and opinions:

The Manistee County Board of Commissioners hereby resolves to levy, under the General Property Tax Act, the total millage of 8.3891 mills FY 2011/12 operations. Included in this total millage are:

County Allocated Operating	5.4615
County Library Voted	1.0000
Medical Care Voted	.5000
9-1-1 Voted	.8000
Dial-A-Ride Voted	.3276
Council on Aging Voted	.3000

The Board further resolves to adopt the FY 2011/12 General Fund Operating Budget at a total of \$ 9,914,866 and FY 2011/12 Supplemental Fund budgets totaling \$ 3,214,091 (net).

The Board further resolves to approve all wage increases for FY 2011/12 in accordance with the Union Labor Contracts and various other agreements reached between the

## (APPENDIX B-4)

THURSDAY, SEPTEMBER 22, 2011

Manistee County Board of Commissioners, Elected Officials, employees, and the County and Chief Judges of the Circuit, District, and Probate Courts.

The Board further resolves that the FY 2011/12 Budget will follow the philosophy of a line item expenditure control budget for all County Departments and Courts with specific end results with a basic approach as follows:

In the event that a department finishes the fiscal year with non-personnel related funds continuing to be available, one-half of that amount would be set aside into an account specifically dedicated to departmental purchases. That amount could be used in future years by the department to cover cost overruns. That amount could accrue from year to year to the benefit of the departments. Expenditures from that account could only be made for departmental services, equipment or programs. The other one-half of any annual budget underrun would revert to the General Fund balance for use at the discretion of the County Board of Commissioners. The Board resolves to implement this program subject to modifications which may be required and subject to elimination of the program after some experience if the plan does not provide the anticipated benefits.

The Board further resolves that an appropriation is not a mandate to spend but shall limit the amount which may be spent for such purposes as are defined by the Board of Commissioners and which shall be limited to the time period of October 1, 2011 through September 30, 2012. The Board further resolves that any County department, Court, agency, board, commission or unit whatsoever, and any organization, public or private, which accepts a County appropriation shall do so subject to an agreement which provides for an inspection and/or audit by the Manistee County Board or its designee. The Board or its designee shall have access for the purpose of audit and examination to any and all books, documents, papers and records of the recipient organization. Each funded agency shall also be required to provide the County with its annual budget each year.

The Board further resolves that in the event the State of Michigan fails to provide certain revenue transfer payments as required by State law and/or contractual agreements between the State of Michigan and Manistee County, the specific programs funded by such State revenue transfer payments shall bear the full impact of such revenue reduction. In the event the State of Michigan defaults or otherwise fails to provide general, unrestricted revenue transfer payments, the Board, upon the recommendation of the Ways & Means committee shall allocate said revenue reduction in its legislative judgement. **The Manistee County Board of Commissioners can not and will not absorb the program costs created by revenue transfer payment default by the State of Michigan.**

The Board further resolves that the budget may be amended upon the recommendation of the Ways & Means Committee as conditions indicate, provided the budget remains in a balanced state.

Moved by Kowalski, supported by Schmidt to adopt the County of Manistee General Appropriations

Act-2011 as stated above.

YEAS: 7 Hilliard, Kowalski, Krolczyk, Lottie, Rutske, Schmidt, Anderson

NAYS: 0

Motion Carried

+++++

### FINANCE COMMITTEE REPORT

Ervin Kowalski presented the Finance Committee Report.

JUL 10 2003

(APPENDIX B-5)



MIKE COX  
ATTORNEY GENERAL

P.O. Box 30212  
LANSING, MICHIGAN 48909

July 8, 2003

Honorable Fulton J. Sheen  
State Representative  
The Capitol  
Lansing, MI 48913

Dear Representative Sheen:

You have asked whether the use of a pre-existing table-based wage system or formula and related policies to determine the specific dollar amount to be paid an elected county official (i.e., the Treasurer) by the county board of commissioners is consistent with applicable law.

You note that in February 2003, you requested an opinion on this matter and that in response I issued OAG, 2003-2004, No 7128 p \_\_\_\_ (April 7, 2003) (copy attached). That opinion concluded that a county board of commissioners may not reduce the annual salary of a county treasurer during a four-year term of office, following resignation of the person elected to that office, and prior to the appointment of a new county treasurer for the unexpired remainder of the term consistent with MCL 45.421(1). The statutory prohibition applies whether the person was elected or appointed to that term of office. You further note, however, that the county believes certain issues remain unresolved by Opinion No 7128. Your letter indicates that some Allegan County officials take the position that a county elected officer's "annual salary" is not unlawfully diminished within the term of office if the salary paid to the successor in office is based on the application of a table-based compensation system established before the term of office began to run.

A brief review of the facts as provided to this office is necessary to answer your question. On December 28, 2000, the Allegan County Board of Commissioners implemented a table-based compensation system or formula for county department heads and elected officials under which each position was assigned pay "grade" or "range." Within each pay grade are six pay "steps" ranging from "Minimum" to "5 years." The "years" generally refer to an individual's years of service in the position. Under this table-based compensation system or formula, the compensation of an individual is determined by cross-referencing the appropriate pay grade or range with the appropriate pay step. The position of County Treasurer was determined to be at pay grade or range 14.

As you know, your question arises in relation to an office you formerly held. Prior to serving in the Legislature, you were elected the Allegan County Treasurer. You were elected to

## (APPENDIX B-6)

a four-year term as Allegan County Treasurer in 1996 and 2000. In January 2003, you resigned your office as Allegan County Treasurer to serve in the Michigan House of Representatives. At the time of your resignation as Allegan County Treasurer you were receiving \$63,690, which was step 5 of range 14. The Deputy Treasurer, Ms. Sally Brooks, was then appointed Treasurer. As Deputy Treasurer, Ms. Brooks's scheduled 2003 compensation was step 5 of range 11 of the applicable compensation table, or \$48,381.

Allegan County's Personnel Rules and Regulations, IV. Compensation Plan, B. Administration of the Compensation Plan, provide in pertinent part:

A promotion is the reassignment of an employee from a current position into a different position with a higher pay grade. If an employee is promoted, he/she shall be placed in the new range at the first step which represents at minimum an increase equivalent to a one-step increase in the old range from which they were promoted.

Upon your resigning the office of County Treasurer before the expiration of your term and the county's appointment of Ms. Brooks to fill the unexpired balance of your term, the County followed this promotion policy and set Ms. Brooks's annual salary as Treasurer for 2003 at the minimum step of range 14 of the compensation table for department heads and elected officials, or \$52,229. This constituted an \$11,461 decrease in the annual salary paid to the Allegan County Treasurer during the four-year term beginning January 1, 2001.

A county board of commissioners cannot decrease the salary of a county official prospectively, by application of a policy or procedure that reduces the salary of any successors to current officeholders. As OAG, No. 7128, p. \_\_\_\_, makes clear, "the prohibition in MCL 45.421 against a county board of commissioners decreasing a county officer's salary during his or her term is not limited to the person who was elected to the office." In short, a county board of commissioners cannot tie the salary to be paid based on the identity of the county official, regardless of whether the official is a current officeholder or a successor. "This is because MCL 45.421 expressly provides that such prohibition applies to the 'term' of office and not the officer personally."

Insofar as Allegan County's table-based compensation system and policies are concerned, MCL 45.421 is controlling. The language of MCL 45.421<sup>1</sup> is clear that although a county board of commissioners has the power to fix the salary of a county officer, it is expressly prohibited from diminishing that salary during a term of office.

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<sup>1</sup> MCL 45.421(1) provides:

The annual salary of each salaried county officer, which is by law fixed by the county board of commissioners, shall be fixed by the board before November 1 each year and shall not be diminished during the term for which the county officer has been elected or appointed, but may be increased by the board during the officer's term of office. (Emphasis added.)

**(APPENDIX B-7)**

Where the language of a statute is clear and unambiguous, it must be enforced as written, *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW 2d 119 (1999).

It is my opinion, therefore, that Allegan County's table-based compensation system and personnel rules and procedures, to the extent that they require that a successor county treasurer be paid a lower salary than that paid to her predecessor in office at the time of his resignation as county treasurer before the expiration of his term of office, are contrary to and therefore expressly prohibited by MCL 45.421.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mike Cox", written in a cursive style.

Mike Cox  
Attorney General

Att.

## (APPENDIX B-8)

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

COUNTIES:

Authority of county board of commissioners to  
reduce appointed county treasurer's salary during  
term of office

PUBLIC OFFICES AND OFFICERS:

A county board of commissioners may not reduce the annual salary of a county treasurer during a four-year term of office, following the resignation of the person elected to that office, and prior to the appointment of a new county treasurer for the unexpired remainder of the term. The statutory prohibition applies regardless of whether the person was elected or appointed to that term of office.

Opinion No. 7128

April 7, 2003

Honorable Patricia Birkholz  
State Senator  
The Capitol  
Lansing, Michigan

Honorable Fulton J. Sheen  
State Representative  
The Capitol  
Lansing, Michigan

You ask if a county board of commissioners may reduce the annual salary of a county treasurer during a four-year term of office, following the resignation of the person elected to that office, and prior to the appointment of a new county treasurer for the unexpired remainder of the term.

Const 1963, art 7, § 9, addresses the compensation of county officers and provides as follows:

Boards of supervisors shall have *exclusive power* to fix the compensation of county officers  
*not otherwise provided by law*. [Emphasis added.]

The Legislature has also addressed the compensation of county officers. Section 1(1) of 1879 PA 154,<sup>1</sup> as amended, MCL 45.421(1), the Salaries of County Officers Act (Act), provides as follows:

The annual salary of each salaried county officer, which is by law fixed by the county board of commissioners, shall be fixed by the board before November 1 each year and *shall not be diminished during the term for which the county officer has been elected or appointed*, but may be increased during the officer's term of office. [Emphasis added.]

Constitutional and statutory provisions are to be construed according to their plain meaning. *People v Bulger*, 462 Mich 495, 507; 614 NW2d 103 (2000) ("[T]he primary source for ascertaining [a constitutional provision's] meaning is to examine its plain meaning as understood by its ratifiers at the time of adoption"); *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631 NW2d 686 (2001) ("If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written").

## (APPENDIX B-9)

The phrase "not otherwise provided by law" in Const 1963, art 7, § 9, means that a county board of commissioners may set the salary of county officers, subject to any compensation provisions that have been adopted as law by the Legislature, such as MCL 45.421. See OAG, 1997-1998, No 6941, p 38, 39 (June 13, 1997).

In *Attorney General v Oakland County*, 125 Mich App 157, 158-159; 335 NW2d 654 (1983), the Court recognized that under the Act, the county board of commissioners has considerable latitude in establishing the compensation of county officers. MCL 45.421, to the extent that it prohibits a county board of commissioners from decreasing the salary of a county officer during his or her term, is consistent with the Legislature's power to provide by law for the compensation of county officers. OAG, 1997-1998, No 6941, *supra*, at p 39.

Furthermore, the prohibition in MCL 45.421 against a county board of commissioners decreasing a county officer's salary during his or her term is not limited to the person who was elected to the office. This is because MCL 45.421 expressly provides that such a prohibition applies to the "term" of office and not the officer personally. Thus, a "term" is not personal to the officer but rather refers to the office.

The validity of the foregoing conclusion is underscored by reference to MCL 168.203 and MCL 168.209. MCL 168.203, which defines the term of office of a county treasurer, provides:

The *term of office* of the . . . county treasurer, . . . shall begin on January 1 next following the election, and continues until a successor is elected and qualified . . . . [Emphasis added.]

MCL 168.209, which sets forth the manner of filling a vacancy of the term of a county treasurer, provides:

If a vacancy occurs in an elective or appointive county *office*, it shall be filled in the following manner:

\* \* \*

(2) If the vacancy is in any other county *office*, the presiding or senior judge of probate, the county clerk, and the prosecuting attorney shall appoint a suitable person to fill the vacancy.

(3) *A person appointed shall take and subscribe to the oath as provided in section 1 of article XI of the state constitution of 1963, give bond in the manner required by law, and hold office for the remainder of the unexpired term and until a successor is elected and qualified. However, if the next general November election is to be held more than 182 days after the vacancy occurs, and it is not the general November election at which a successor in office would be elected if there were no vacancy, the person appointed shall hold office only until a successor is elected at the next general November election in the manner provided by law and qualifies for office. The successor shall hold the office for the remainder of the unexpired term.* [Emphasis added.]

Finally, although not dealing specifically with the Act in question here, the Michigan Supreme Court in *Hawkins v Voisine*, 292 Mich 357, 359; 290 NW 827 (1940), held that a person whose entitlement to the office of village president was not decided until after the term had expired was nevertheless entitled to the salary, explaining: "An official salary is not made dependent upon the amount of work done, but belongs to the office itself without regard to the personal service of the officer." (Citations omitted.)

It is my opinion, therefore, that a county board of commissioners may not reduce the annual salary of a county treasurer during a four-year term of office, following the resignation of the person elected to that office, and prior to the appointment of a new county treasurer for the unexpired remainder of the term. The statutory prohibition applies regardless of whether the person was elected or appointed to that term of office.

MIKE COX  
Attorney General

<sup>1</sup> Section 1(2) provides an exception for counties that have a county officers compensation commission:

**(APPENDIX B-10)**

Notwithstanding subsection (1), for a county which has a county officers compensation commission, the compensation of each nonjudicial elected officer of the county shall be determined by that commission. A change in compensation for those officers of a county which has a county officers compensation commission shall commence at the beginning of the first odd numbered year after the determination is made by the county officers compensation commission and is not rejected. [MCL 45.421(2).]

Because your question relates to salaries fixed by the county board of commissioners under section 1(1), this opinion does not address compensation set under section 1(2).

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<http://opinion/datafiles/2000s/op10203.htm>

State of Michigan, Department of Attorney General

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